

**RULES
OF
THE TENNESSEE DEPARTMENT OF CORRECTION
DIVISION OF COUNTY PROGRAMS**

**CHAPTER 0420-2-3
COUNTY CORRECTIONAL INCENTIVES PROGRAM PARTICIPATION AND FUND DISTRIBUTION
SUBSIDY GRANT FUNDS**

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0420-2-3-.01 PREFACE.

Under the authority of T.C.A. §41-8-108, the Department of Correction is authorized and directed to establish rules for the general administration of the County Correctional Incentives Act.

Authority: T.C.A. §§41-8-102, 41-8-103, 41-8-108; Public Chapter No. 869 and Public Chapter No. 1037, 1988 Tenn. Public Acts. **Administrative History:** Original rule filed September 13, 1988, effective December 28, 1988. Repeal and new rule filed February 5, 1990; effective May 29, 1990.

0420-2-3-.02 APPLICABILITY.

- (1) Pursuant to the County Correctional Incentives Act, T.C.A. §41-8-101 et seq., the rules and regulations set forth in this Chapter shall, as of July 1, 1989, govern the disbursement of funds for all counties housing convicted felons in local correctional facilities. These rules will also apply to those counties which elect to house certain felons sentenced under T.C.A. §40-35-104(b) to serve their sentences in county correctional facilities beginning on or after July 1, 1992.

Authority: T.C.A. §§41-8-103, 41-8-108; Public Chapter No. 869 and Public Chapter No. 1037, 1988 Tenn. Public Acts. **Administrative History:** Original rule filed September 13, 1988; effective December 28, 1988. Repeal and new rule filed February 5, 1990; effective May 29, 1990.

0420-2-3-.03 AGREEMENT TO CONTRACT TO HOUSE FELONS.

- (1) In accordance with T.C.A. §41-8-106, as of July 1, 1992, no county shall be required to house convicted felons with a sentence of one or more years confinement unless the county, through the authority of its county commission, has chosen to contract with the Department of Correction to house certain felons in county correctional facilities.
- (2) Those counties which desire to contract with the Department of Correction to house felons after July 1, 1992, must notify the Commissioner of Correction of their intent by November 1, 1989. To be effective said notification must be in the form of a certified copy of a resolution which has been approved by majority vote of the county commission following comment from the sheriff and chief executive officer concerning the proposal.
- (3) Once a county has properly notified the Commissioner of Correction of its intent to contract with the Department of Correction to house certain felons after July 1, 1992, or has properly contracted with the state to house certain felons after July 1, 1992, that county shall not be

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allowed to alter its intent nor cancel its contract with the state unless and until the county has provided the state with two (2) years advance notice.

Authority: T.C.A. §§41-8-102, 41-8-103, 41-8-106, 41-8-108; Public Chapter No. 869 and Public Chapter No. 1037, 1988 Tenn. Public Acts. **Administrative History:** New rule filed September 13, 1988; effective December 28, 1988. Repeal and new rule filed February 5, 1990.- effective May 29, 1990.

0420-2-3-.04 FAILURE TO COMPLY WITH SUBSIDY GRANT REGULATIONS.

Receipt by a county of subsidy funds under this chapter shall be conditioned upon full compliance with the terms and requirements set forth herein. Failure to comply with any of the terms and requirements set forth herein shall constitute grounds for temporarily or permanently withholding further subsidy grant payments to the county or adjusting the amount of such payments. The Commissioner of Correction also retains the authority to require the repayment of any subsidy grant funds received by a county found by the commissioner to be in material noncompliance with the terms and requirements set forth herein.

Authority: T.C.A. §§41-8-102, 41-8-103, 41-8-108, Public Chapter 869 and 1037, 1988 Tenn. Public Acts. **Administrative History:** Original rule filed September 13, 1988; effective December 28, 1988. Repeal and new rule filed February 5, 1990; effective May 29, 1990.

0420-2-3-.05 COMPENSATION.

- (1) All funds for the subsidy grant program will be dispersed from the State Prosecution Fund administered by the Office of the State Comptroller.
- (2) The Judicial Cost Accountant will determine the amount of each county's subsidy grant in consultation with the Department of Correction based upon the reasonable allowable costs which are incurred by a county that has agreed to house state felons.
- (3) A county's reasonable allowable cost for housing felons for the state will be determined by the Judicial Cost Accountant in consultation with the Department of Correction upon the county's submission of cost data sheets and supporting schedules, in such form as is established by the Judicial Cost Accountant, showing the actual, reasonable and necessary costs incurred by the county in housing felons in a local correctional facility.
- (4) A cost will be considered "reasonable, and "allowable, if, in its nature or amount, it does not exceed that which would be incurred by an ordinary and prudent person conducting a similar enterprise.
- (5) The state will reimburse a participating county for the state's proportionate share of the total reasonable allowable cost incurred by the county in operating a correctional facility in an amount which will equal the state's proportionate share of the facility's total inmate population as represented by the number of convicted felons housed therein.
- (6) Once the Department of Correction notifies a county that it has the capacity to house some or all of the felons who have been sentenced to confinement with the Department of Correction but which the county is holding and requests that the sheriff convey them to a reception center by a certain date, the State will reimburse the county at a flat rate of \$18 or \$20 for the cost of housing those felons after that date, the amount to be determined in accordance with 0420-2-3-.07(2)(e).
- (7) Should the amount of appropriated funds be insufficient to reimburse counties at the rates established pursuant to these rules, the commissioner may establish a temporary rate schedule to insure that total reimbursement does not exceed the budgeted amount. The temporary rate

(Rule 0420-2-3-.05, continued)

schedule may give priority to contractual obligations established pursuant to *T.C.A. §41-8-106* and then provide a standard rate for all other counties as funds become available.

Authority: *T.C.A. §§9-1-116, 41-8-103, 41-8-106, 41-8-108; Public Chapter 869 and 1037, 1988 Tenn. Public Acts. Administrative History:* Original rule filed September 13, 1988; effective December 28, 1988. Repeal and new rule filed February 5, 1990; effective May 29, 1990. Amendment filed September 26, 1990, effective December 29, 1990. Amendment filed February 26, 1991; effective May 29, 1991. Amendment filed March 25, 1992; effective June 29, 1992.

0420-2-3-.06 REASONABLE ALLOWABLE COSTS.

- (1) The direct personnel cost of both full-time permanent employees and part-time employees will be considered a reasonable allowable cost as will personnel benefits, including insurance programs, retirement programs and other employer contribution plans which are provided by the county. A county, however, must submit its compensatory plan to the Judicial Cost Accountant so that the reasonableness of its staffing and compensation may be determined by the Commissioner of Correction. Unless a county can demonstrate that a greater portion of its sheriff's salary and benefits should be considered to be part of the county's correction expenses, fifty percent (50%) of the salary and benefits which are paid to a county's sheriff will be deemed to be part of the county's correction expenses. The State reserves the right to deem unallowable any direct personnel costs which are in excess of the State's compensation for similar positions or if the facility's staffing level appears excessive. The Commissioner of Correction shall notify the Judicial Cost Accountant if such an adjustment is deemed necessary.
- (2) Expenditures for part-time or contract services (e.g., janitorial, laundry, legal, maintenance and repair, medical and dental, etc.) and consultants will also be considered reasonable allowable costs, except for medical costs incurred by the county outside of the correctional facility which will remain subject to reimbursement under other State procedures.
- (3) Other direct costs for inmate care and treatment and facility maintenance and operation will be considered as part of a county's total reasonable allowable cost. The cost of land will not be included as part of a county's reasonable allowable cost, however, depreciation expense on fixed assets other than land may be included when computing reasonable allowable costs to the extent that such items were not part of any State or Federal grant provided the county for construction, renovation or equipment. Annual depreciation on buildings and major renovation shall be allowed at four percent (4%) of the original cost. Buildings and renovations will be considered fully depreciated twenty-five (25) years after construction. Depreciation will not be allowed after a building or renovation has been fully depreciated. Interest expense incurred in the financing of a building or renovation may be included in the cost basis for capital depreciation. The initial expense of acquiring equipment for a new facility, major renovation or addition may be included as part of the basis for calculating annual facility depreciation or may be expensed as regular equipment cost over a period of no less than three (3) years. Depreciation on renovations and other fixed assets shall be treated as a capital expenditure and recorded in a county's fixed asset group of accounts, provided that generally accepted accounting principles are followed. Fines and penalties are considered to be unallowable costs.
- (4) In lieu of claiming depreciation expenses, a county may request, conditioned upon acceptance of the proposal by the commissioner, that the Department of Correction pay a percentage, corresponding to the percentage of the facility which will be available (whether or not actually utilized) to house such felons, of the actual cost of the debt service incurred by the county in constructing or renovating correctional facilities primarily dedicated to housing felons sentenced locally pursuant to *T.C.A. §40-35-104(b)*. Debt service payable as a reasonable allowable cost under this provision includes any required reimbursement to a debt service reserve fund established under debt instruments, as well as trustees' and rating agencies' fees. Not

(Rule 0420-2-3-.06, continued)

withstanding any other provision of these rules, the Department may pay debt service for the county in accordance with a debt service schedule as a reasonable allowable cost from the time the county incurs the debt service, regardless of whether, at the time, the facility being financed by the debt issue is actually housing felons sentenced pursuant to *T.C.A. §40-35-104(b)*, and regardless of whether the county has submitted verification, monthly reports or other information required under these rules.

- (5) The normal indirect costs incurred by a county housing felony prisoners will be considered in determining a county's "reasonable allowable cost." Indirect costs are costs incurred for accounting functions, data processing, purchasing and similar services furnished by other county departments to support the correctional facility. A county may claim two percent (2%) of total direct cost in lieu of establishing an indirect cost allocation plan. If a county has an indirect cost allocation plan established in accordance with the U.S. Office of Management of the Budget's Circular A87, a copy of the plan may be submitted and the facility will be reimbursed for its total allowable indirect costs as reflected in the OMB Circular A87. Duplication of the same cost item as both a direct and an indirect cost, however, will not be allowed.
- (6) Revenues and income received by a county correctional facility for housing inmates on behalf of another governmental entity will serve to proportionately reduce the amount paid to a county for housing felony inmates for the State, excluding any amounts set forth in a debt service schedule pursuant to subsection (4). All revenues and income received by a county correctional facility for housing inmates on behalf of another governmental entity must be identified as to source and reported to the Judicial Cost Accountant; the total inmate days for which a county is reimbursed for housing inmates on behalf of another governmental entity must be deducted from total facility population, however.
- (7) Medical costs for State prisoners which are incurred as emergency hospitalization expenses shall not be included in determining daily cost but must be reimbursed under the provisions of *T.C.A. §414115(b)*. Any other related expense, such as the cost of guarding a state prisoner during emergency hospitalization, will be considered an allowable cost and should be included when determining the daily inmate cost. Any reimbursement received for such costs must also be included as an offsetting revenue.

Authority: *T.C.A. §§411108, 418102, 418103, 418106, 418108, Public Chapter 869 and 1037, 1988 Tenn. Public Acts.* **Administrative History:** *Original rule filed September 13, 1988, effective December 28, 1988. Repeal and new rule filed February 5, 1990, effective May 29, 1990. Amendment filed September 26, 1990, effective December 29, 1990. Amendment filed February 26, 1991; effective May 29, 1991.*

04202-3-.07 PAYMENT OF COMPENSATION.

- (1) Compensation to counties for housing felons locally will be paid by establishing an average daily cost for care of the felony inmates based upon the criterion of "reasonable allowable costs" as outlined above. Payment shall initially be made by establishing an interim (estimated) daily inmate cost for each county to be followed by payment on an annual basis of the difference between the interim daily inmate cost and what is determined to be a county's actual daily inmate cost for that year.
- (2) Interim Rate
 - (a) Each county's interim daily inmate cost will be established for each fiscal year beginning on July 1. A county's interim daily rate shall be based on 90% of its estimated operating costs for the fiscal year divided by the total estimated inmate days for the fiscal year. An interim cost data sheet and supporting schedules as designed by the Judicial Cost Accountant must be certified by the chief executive officer of the county and filed with

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- the Judicial Cost Accountant within thirty (30) days after adoption of the county's budget. The sheriff or other appropriate official must certify the total estimated inmate days.
- (b) The county must submit a copy of the compensatory plan for its correctional officers and employees at the same time that its interim daily inmate cost estimate is filed with the Judicial Cost Accountant.
 - (c) In the event a county's budget has not been approved by the appropriate legislative body by August 31 of a fiscal year, an interim daily inmate cost may be established by dividing the net operating expenses for the previous fiscal year by the total estimated inmate days for the fiscal year for which the rate applies.
 - (d) Any county which filed a final cost determination for the previous fiscal year may elect to have its interim daily inmate cost established by using the new operating cost of the previous fiscal year, increased by three percent (3%), as a base prior to establishment of the interim cost as provided by paragraph (a) above. Should a county choose to utilize this method, the county's chief executive officer shall promptly notify the Judicial Cost Accountant of this decision by letter.
 - (e) A county may, on an annual basis, elect to be reimbursed for incarcerating state prisoners at a flat rate in lieu of basing the amount of such reimbursement on the criterion of "reasonable allowable cost". In the event a county wishes to make such an election, the County Commission must pass a resolution providing that, for the forthcoming fiscal year, the county has elected to be reimbursed for housing state prisoners at the applicable flat rate of reimbursement and must notify the Judicial Cost Accountant of its decision by letter accompanied by a certified copy of said resolution. Claims for reimbursement for nonparticipating facilities will be filed in the same manner as claims of participating facilities. The flat rate of reimbursement will vary based upon a county's operating capacity as determined by the Tennessee Correction Institute. If the county's rated capacity on January 1 of the preceding fiscal year is greater than, or equal to, one hundred (100) inmates, a county so choosing will be reimbursed at the rate of twenty dollars (\$20.00) per day for each convicted felon it houses; otherwise, the county will be reimbursed at the rate of eighteen dollars (\$18.00) per day for each convicted felon it houses. Notwithstanding any other provision in these rules, no county, even those receiving reimbursement based upon the "reasonable allowable cost" criterion, shall receive less than eighteen dollars (\$18.00) per day for each convicted felon it houses.
 - (f) If extenuating circumstances occur during a fiscal year which cause an appreciable variance in the interim daily inmate cost or a county's operating capacity, the county may submit a request for adjustment of its interim daily inmate cost rate to the Judicial Cost Accountant. The Judicial Cost Accountant, in consultation with the Department of Correction, shall determine the reasonableness of all requests for interim rate changes and notify each county of approval or disapproval of its request.
 - (g) The interim daily inmate cost shall be used in billings for the actual state prisoners incarcerated during the fiscal year. Billings to the state shall occur on a monthly basis. Payment on behalf of the state shall be made to a county following approval of a county's monthly billing by the Judicial Cost Accountant. The final monthly payment by the state to a county for a fiscal year shall not be payable until determination of actual daily inmate cost and approval of all of a county's monthly billings for state prisoners. The final payment to a participating county shall be sufficient to reimburse the county one

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hundred percent (100%) of the actual cost of housing state prisoners which the county incurred in the preceding fiscal year.

- (h) Notwithstanding any other provision in these rules, the Commissioner of Correction shall have the authority, upon application by the county, the submission of such information as the commissioner may require and consultation with the Comptroller of the Treasury, to determine a county's interim reimbursement rate. Any county which has its interim rate so determined by the commissioner must still complete and submit to the Judicial Cost Accountant cost data sheets and supporting schedules in order that an actual daily inmate cost may be determined for the county as provided in paragraph 042023.07(3) of these rules.

(3) Actual Rate

- (a) Within sixty (60) days after the end of each fiscal year, each participating county shall determine its actual daily cost for detaining state prisoners based on its actual operating costs for the year divided by the total number of inmate days for the same year. A final cost data sheet, in such form as may be established by the Judicial Cost Accountant in consultation with the Department of Correction, must be completed and certified by the chief executive officer of the county. The sheriff or other appropriate official shall certify the total actual inmate days for the year.
- (b) The final compensation paid to a county by the state for the fiscal year will be equal to the state's proportionate share of the total allowable operating costs of the facility.
- (c) Upon determining its actual daily inmate cost, a county shall, within thirty (30) days, submit a report to the Judicial Cost Accountant which must include the cost data sheet and supporting schedules showing the computation of the actual daily inmate cost. If additional funds are due the county over and above what has been paid to a county in interim rates payments, an invoice for the difference shall be included or, if an overpayment has occurred, a payment credit given to the state.

(4)

- (a) Monthly subsidy payments shall be made only after the Judicial Cost Accountant receives from the county a report containing the following information about each state prisoner housed in the facility for the preceding month:

1. Prisoner's Name
2. Jail Docket Numbers
3. Offense(s) Resulting in Commitment
4. Circuit or Criminal Court Case Number
5. Dates of Confinement
6. Judgment Dates
7. Terms of Judgment
8. Release Date
9. Terms of Release

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10. Offender's TDOC MIS Number
 11. Such other information as may be necessary to ascertain the subsidy due for individual prisoners.
- (b) The reports required by section 042023.07(4)(a) must be submitted within sixty (60) days following the end of a month for which a subsidy payment is being requested. Upon written request of the sheriff or superintendent, and upon good cause being shown, the Commissioner of Correction may authorize up to an additional thirty (30) days for the filing of any such report.
 - (c) Reports required by section 042023.07(4)(a) shall be signed by the sheriff or superintendent and by the Circuit or Criminal Court Clerk with the clerk's seal attached.
 - (d) For purposes of the subsidy grant program and the filing of reports required by this section, "state prisoner" shall mean an individual held in a local correctional facility following conviction on a felony charge, including those felons who are sentenced to local confinement, confined for violation of parole under T.C.A. §4028121, or whose probation or alternative sentencing agreement has been revoked.

Authority: TCA. §418108. **Administrative History:** Original rule filed February 5, 1990; effective May 29, 1990. Amendment filed September 26, 1990; effective December 29, 1990.

04202-3-.08 ACCOUNTING PROCEDURES.

- (1) Each county shall maintain adequate documentation for all expenditures made by each of its correctional facilities.
- (2) Each participating county must maintain a daily log for each of its correctional facilities containing the names of all individuals (i.e. felons, misdemeanants, pretrial detainees, parole violators, etc.) incarcerated in the facility, indicating the reason they are incarcerated therein, and reflecting when they were admitted to or removed from the facility.
- (3) The books, records, and documents of the participating county facility, insofar as they relate to the money received or expenditures made in regard to the program, must be maintained for a minimum of three (3) years.
- (4) All books, records, and documents relating to the County Corrections Incentive Program shall be subject to audit at any reasonable time upon reasonable notice by the Department of Correction, the Judicial Cost Accountant, or their duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles and at no less than those recommended in the Accounting Manual for recipients of grant funds in Tennessee published by the Comptroller of the Treasury, State of Tennessee.

Authority: T.C.A. §418108. **Administrative History:** Original rule filed February 5, 1990; effective May 29, 1990.

04202-3-.09 PRIVATELY MANAGED COUNTY CORRECTIONAL FACILITIES.

Any county which contracts with a private nongovernmental entity for management and operation of its local correction facility must still comply with the procedures and requirements set forth in these rules in order to receive reimbursement from the state based upon the reasonable allowable cost of housing state felons.

Authority: T.C.A. §418108. **Administrative History:** Original rule filed February 5, 1990; effective May 29, 1990.